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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,488	07/19/2002	Daniel R. Hoyt	SD2	2904

31655 7590 12/23/2003

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EXAMINER

REIFSNYDER, DAVID A

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 12/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary



Application No.

10/064,488

Applicant(s)

HOYT ET AL.

Examiner

David A Reifsnnyder

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 September 2002 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

### ***Specification***

The substitute specification including the claims filed on September 3 , 2002 has been entered.

### ***Priority***

The priority data in the Cross Reference to Related Applications section of the specification is objected to because a Non-Provisional Application can not claim that it is

a continuation of a Provisional Application. A Non-Provisional Application can only claim the **benefit** of a Provisional Application.

### ***Claim Objections***

Claims 1-4 are objected to because of the following informalities: The use of the words "We claim" in claims 1-4 is improper and should not be included

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1; the recitation of "We claim the creation and use of a portable device..." is vague and indefinite because while a claim can only claim one statutory class of invention, claim 1 appears to claiming three statutory classes of inventions (i.e. an apparatus, process and process of making an apparatus). Furthermore, it is vague and indefinite as to where the preamble of the claim stops and the body of the claim begins. In addition, it is vague and indefinite as to whether the body of the claim is open or closed (i.e. comprising or consisting of?). Also, the recitation of (made from either

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food grade or non food grade materials) is vague and indefinite as to why that recitation is in parenthesis, as well as what is meant by food grade materials and nonfood grade materials. In addition, it is vague and indefinite as to whether the applicant is trying to claim an improved strainer/colander or if the applicant is only claiming a base to elevate a strainer/colander. Also, the recitation of "such devices" is vague and indefinite as to what is meant by such devices. Furthermore, the recitation of "the food products" lacks antecedent basis.

Regarding claim 2; the recitation of "We claim the creation and use of a new strainer colander" is vague and indefinite because while a claim can only claim one statutory class of invention, claim 2 appears to claiming three statutory classes of inventions (i.e. an apparatus, process and process of making an apparatus). Furthermore, it is vague and indefinite as to where the preamble of the claim stops and the body of the claim begins. In addition, it is vague and indefinite as to whether the body of the claim is open or closed (i.e. comprising or consisting of?). Also, the recitation of (made from either food grade or non food grade materials) is vague and indefinite as to why that recitation is in parenthesis, as well as what is meant by food grade materials and nonfood grade materials. Also, the recitation of "such devices" is vague and indefinite as to what is meant by such devices. Furthermore, the recitation of "the food products" lacks antecedent basis.

Regarding claim 3; since claim 3 is an independent claim and not a dependent claim, the entire claim 3 can not be understood. In addition, it is vague and indefinite as

to where the preamble of the claim stops and the body of the claim begins. Also, it is vague and indefinite as to whether the body of the claim is open or closed (i.e. comprising or consisting of?). In addition, the recitation of "such devices" is vague and indefinite as to what is meant by such devices. Furthermore, the recitations of "the strainer/colander", "the surface on which it rests", "the universal device", "the top", and "the bottom" all lacks antecedent basis.

Regarding claim 4; claim 4 is vague and indefinite because it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim. See section 2173.05 (r) of the MPEP.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Massey et al. who discloses a colander/strainer (3, 4) which is elevated by a vessel (2). See figures 1 and 3-5.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Rayborn et al. who discloses a colander/strainer (1) which is elevated by a container (3). See figure 1.

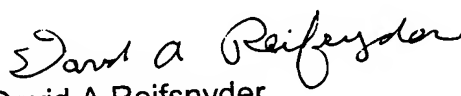
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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Reifsnyder whose telephone number is (571) 271-1145. The examiner can normally be reached on M-F 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda M Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-3601.

  
David A Reifsnyder  
Primary Examiner  
Art Unit 1723

DAR